

In the Matter of Merchant Mariner's Document No. Z-846356 and all other
Issued to: GEORGE A. ZEIGLER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1187

GEORGE A. ZEIGLER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 1 March 1960, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a messman on board the United States SS HAWIIAN REEFER under authority of the document above described, or on about 6 January 1960 Appellant assaulted and battered, with a deadly weapon, another member of the crew, messman Albert R. Moss, Jr.

At the hearing, Appellant was not represented by counsel. Appellant entered a plea of guilty to the charge and specification but this was subsequently changed to a plea of not guilty because Appellant made statements inconsistent with his plea.

The Investigating Officer introduced in evidence the testimony of several witnesses including that of messman Moss. Appellant testified in his behalf.

At the end of the hearing, the Examiner concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright plus three months on eighteen months' probation.

FINDING OF FACT

On January 1960, Appellant was serving as a messman on board the United States SS HAWAIIAN REEFER and acting under authority of his Merchant Mariner's Document No. Z-846356 while the ship was at the port of Alameda, California.

On this date, Appellant returned to the ship to serve the evening meal. Moss had given Appellant \$10 to buy a bottle of whisky while ashore. Appellant produced only a half-pint of whisky in return for the \$10. This provoked a considerable amount of criticism by Moss which led to a heated argument in the ship's pantry, between the two seaman, until the cook ordered them to perform their duties. Appellant left the pantry.

A few minutes later, Appellant appeared in the galley where Moss was waiting for food to serve. Appellant approached Moss, took a straightedge razor out of his pocket without warning, and cut Moss one or more time on his left leg before Moss grabbed Appellant's wrists. The two men struggled for possession of the razor until the Chief Mate arrived and stopped the fight while Appellant was on top of Moss. In all, Moss suffered three severe cuts on his left leg. The Chief Mate applied a tourniquet and Moss was taken ashore to a hospital. Thirty-five stitches were required to close the wounds.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Examiner erroneously disregarded Appellant's credible testimony; Appellant was fined by the local authorities for this offense; the order is too severe due to Appellant's prior clear record.

OPINION

In addition to Moss, two other members of the crew testified that Appellant attacked Moss with the razor without provocation and that Moss did not have a weapon in his possession at any time. The Examiner accepted this testimony. Consequently, he rejected Appellant's testimony that Moss pulled the razor from his pocket and was cut in the struggle to get possession of the razor. The Examiner concluded there was a complete absence of reliable evidence that Appellant acted in self-defense.

I agree with Examiner's conclusion. There was absolutely no justification for the Appellant's conduct. The order of suspension imposed is extremely lenient for this serious offense of assault and battery with a deadly weapon. The usual order for an offense of this nature is revocation. It is my opinion that the latter order would be appropriate in this case but limitations on taking such action on appeal have been imposed by regulation. See 46 CFR 137.11-10.

ORDER

The order of the Examiner dated at San Francisco, California, on 1 March 1960, is ~~REVERSED~~ **CONFIRMED**.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 16th day of August 1960.